It goes on to provide for the conduct of the examination and for the presentation of a report.

The opening words of the section are clearly mandatory and peremptory and in my view they constitute a condition precedent which must be complied with before a petition can be heard. I have examined the Ordinance with very great care and I can discover no provision in it which enables me to exercise any discretion to dispense with that condition precedent. I appreciate that in the present case there would be very great difficulties facing the petitioner in complying with it. I appreciate that it is reasonable to suppose the petitioner would have no difficulty whatsoever in complying with the condition. But these considerations, to my mind, do not justify me in disregarding a condition precedent which is framed in mandatory and peremptory terms and to dispense with which the law gives me no discretion.

Judges are not here to make the law. They are not here to find faults in the law. They are here to administer and declare the law as it has been set out by the legislature. If, therefore, what I have said creates any difficulty it is a matter for the legislature to deal with. After all I am here to enforce the law. I am not here to set a bad example to the public by driving a coach and horses through it.

The petition is dismissed.

Petition dismissed.

LIM KOON EE v. MOHD. SAAD

[O.C.J. (Suffian J.) April 4, 1962]

[K.L. — Civil Suit No. 16 of 1961]

Practice and Procedure — Judgment reserved following trial — Application to amend defence before delivery of Judgment — Whether leave to amend should be given — R.S.C., 1957, O.28 rr.1 and 6.

Costs — Delayed application — Costs thrown away.

In a claim by a landlord for recovery of possession of premises comprised in a tenancy, the tenant alleged that the real nature of the transaction was that of money-lending. Following the trial, judgment was reserved by the Court. Before delivery of judgment the defendant applied for leave to amend his statement of defence by adding a counter-claim praying for the re-transfer of the land and house in question to him. The plaintiff objected on the ground that the counter-claim raised new issues which would involve re-opening the whole case and that in any event the application was made too late.

Held: the Court had a discretion under O.28 rr.1 and 6 to grant or refuse leave in such a case. To avoid a multiplicity of proceedings leave to amend the defence would be granted.

CIVIL APPEAL.

M. J. Mathew for the plaintiff.

T. S. Nathan for the defendant.

Cur. Adv. Vult.

Suffian J.: In this case the plaintiff claims possession of premises known as No. 3, Jalan Railway, Petaling Jaya, Kuala Lumpur, and arrears of rent and damages. She says that she is the registered owner of the land, the house on which it stands has been leased to the defendant at $120 a month with effect from 15th September, 1958, and in spite of repeated demands, the defendant has failed to pay the rent.

The defendant says that originally he was the registered owner of the land, but in September, 1958, he borrowed $4,000 from the plaintiff and the land was transferred to her as security; the $120 per month which he agreed to pay her was interest on the loan; the plaintiff was a licensed money-lender who has not complied with the provisions of the Moneylenders Ordinance, though he is prepared to pay the principal and interest thereon on re-transfer of the land to him; and he therefore asks that the suit be dismissed with costs.

The case was heard on 19th, 22nd and 23rd January, 1962, at the end of which I reserved judgment.

By summons in chambers dated 23rd February, 1962, that is before delivery of judgment, the defendant applied for leave to amend his statement of defence by adding thereto a counterclaim praying for the re-transfer of the land and house to him, and costs.

The plaintiff objects to this application because she says that the counterclaim raises new issues, if leave is granted, he is entitled to file a reply which involves reopening the whole case, and the application is made too late.

I have considered this matter with some care, and in the circumstances I feel that the justice of the case requires that I should exercise my discretion under Order 28, rule 1 and rule 6, in favour of the defendant.

The principal issue in this case is whether the land was transferred to the plaintiff as a result of an outright sale, as alleged by the plaintiff, or to secure a loan, as alleged by the defendant. If I find for the plaintiff, she would get her order and that would be the end of the matter. But if, in the absence of a counterclaim, I find for the defendant, that would not be the end of the matter, for it would still be necessary for him to come back to the court for an order that the plaintiff re-transfer the land to him. In order to avoid a multiplicity of proceedings, I grant leave to add the counterclaim. In my view this will not raise any new issues, but I shall of course allow the plaintiff to file a reply within 14 days, and also, at the continued hearing, if any, to recall any witnesses or to call fresh evidence.

As regards costs, because of the delay in making this application the plaintiff should be saved from any expenses which she ought not to bear and I accordingly order that the defendant should pay her the costs of this application, and all costs incurred by her and thrown away in consequence of the amendment hereby authorised. As regards costs of the continued hearing, if any, I shall have regard to the evidence called then before I make an order in respect thereof, for I shall have regard to their

relevance before deciding that the defendant should pay them in any event.

Final judgment on this case will be delivered only after the plaintiff has had an opportunity of filing a reply to the counterclaim, to recall witnesses and to call fresh evidence, if she so wishes.

Order accordingly.

CHAN YOKE MAY v. LIAN SENG CO. LTD. & ANOR.

[O.C.J. (Suffian J.) April 6, 1962]

[K.L. — Civil Suit No. 160 of 1961]

Damages — Principles to be taken into account — Assessment of — Fatal accident — Civil Law Ordinance, 1956, s.7 — General damages.

In the assessment of general damages under section 7 of the Civil Law Ordinance, 1956 it is necessary, in view of the principles enunciated in *Nance* v. *British Columbia Electric Rly. Co. Ltd.*, (1) to estimate (a) the deceased's expectation of life if he had not been killed when he was; (b) what sums during these years he would probably have applied to the support of his wife and children, bearing in mind the allowances to be made for the acceleration of the accrual of interest, the possibility that some of the beneficiaries might have predeceased the deceased had he lived and that the deceased's wife might remarry. Further there should be added to the above what the deceased would have saved during the estimated expectation of life and what of these additional savings his family would have been likely to inherit.

Case referred to:—

(1) *Nance* v. *British Columbia Electric Railway Co. Ltd.* [1951] A.C. 601, 615.

The following cases were also cited during argument: *Nam Thiam Siew* v. *Chuang Wai Lan* [1959] M.L.J. 126, C.A.; and *Seenivasan & Anor.* v. *Lim Yew Seng* [1961] M.L.J. 22, C.A.

CIVIL APPEAL.

S. D. K. Peddie for the plaintiff.

N. A. Marjoribanks for the defendants.

Cur. Adv. Vult.

Suffian J.: In this case the issue of negligence was not seriously contested in court and I have little difficulty in finding that the second defendant's negligence was the cause of the collision in which the deceased suffered injuries and eventually died. It was a rainy day, the surface on which the car was travelling was wooden on which it is only safe to travel at about 10 miles an hour, and yet in this rain the driver did about 30 miles an hour.

As it is admitted that the first defendant was the owner of the car and the second defendant was then driving as his servant or agent, I hold both defendants liable.

As to quantum, special damages to cover funeral expenses were agreed in court at $840.

As regards general damages under section 7 of the Civil Law Ordinance, 1956, it is necessary first to estimate what was the deceased's expectation of life if he had not been killed when he was. He was a healthy man of 43 and considering the possibility of a premature determination of his life by a later accident I estimate his expectation of life at 15 years. It is next necessary to estimate what sums during these years he would probably have applied to the support of his wife and the two children. The wife said that he used to give her $450 every month out of which she gave him his evening meal. Mr. Marjoribanks submitted that as the deceased drew only $574 p.m., probably he paid her only $300 p.m. Taking into account the fact that deceased, had he survived, could have worked another 17 years with government, his prospects in government were good, his liberality with his family might have grown or wilted, I estimate that during the next 15 years, had he not died, he would probably have applied $350 p.m. to the support of his wife and the two children. The present value of this is $43,596. But a deduction must be made for the benefit accruing to the widow and children from the acceleration of their interest in his estate on his death intestate in 1959 (he left, disregarding money under an insurance policy, approximately $28,000 and each of them came into this 15 years sooner than they would otherwise have done); and a further allowance must be made for a possibility which might have been realised if he had not been killed but had embarked on his allotted span of 15 years, namely, the possibility that the wife and children might have died before he did. And there is a further possibility to be allowed for, namely, the possibility that, the widow, who is quite attractive, might remarry in circumstances which would improve her financial position.

These principles are laid down by their Lordships of the Privy Council in *Nance* v. *British Columbia Electric Railway Company Ltd.* (1).

Regard should also be had, as submitted by Mr. Marjoribanks, to the fact that part of the property left by the deceased consisted of a one-half share in rubber lands totalling about 80 acres, of which 30 acres were replanted some six years ago and would be ready for tapping in one or two years. This property will thereafter provide the widow and children a reasonable income for 20 to 25 years.

Continuing the application of the principles above set out by their Lordships of the Privy Council, a figure having been arrived at under the above head, there should be added to it, as submitted by Mr. Peddie, an amount equal to what the deceased would probably have saved during the next 15 years if he had so long endured, and what part, if any, of these additional savings his family would have been likely to inherit. The evidence was that he bought his half share in the rubber lands in 1944, when he died he had $4.41 in the Post Office Savings Bank and his estate received $306.72 by way of benefits from a co-operative society and the Post Office Workers Benevolent Fund. Apart from the war years when he bought the lands when rubber was unsaleable and rubber lands were cheap, and the existence of a life insurance policy, the evidence shows that the deceased would have